P.E.R.C. NO. 2010-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WINSLOW TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2010-038

WINSLOW TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Winslow Township Board of Education for a restraint of binding arbitration of a grievance filed by the Winslow Township Education Association. The grievance contests the Board's decision to stop permitting employees' children from attending district schools tuition free. The Commission holds that the Board's authority to grant or deny tuition waivers is not preempted by N.J.S.A. 18A:38-1; the Board's policy protects its concerns regarding class size; and whether the parties' agreement provides for the arbitration of policy decisions is a question for the arbitrator.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Parker McCay, attorneys (Damon G. Tyner, of counsel)

For the Respondent, Selikoff & Cohen, P.C., attorneys (Keith Waldman and Carol H. Alling, of counsel)

DECISION

On November 9, 2009, the Winslow Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Winslow Township Education Association. The grievance contests the Board's decision to stop permitting employees' children to attend district schools tuition free. We deny the request for a restraint.

The parties' have filed briefs and exhibits. The Board filed the certification of its superintendent, H. Major Poteat. After the Association filed a response, the Board filed a second certification of the Superintendent. These facts appear.

The Association represents certain Board employees. The parties' collective negotiation agreement is effective from July 1, 2007 through June 30, 2010. The grievance procedure ends in binding arbitration.

Article I is entitled Negotiations Procedure. Section F states that past practices providing benefits shall continue in effect during the term of the agreement.

In April 2009, the Township residents did not approve the Board's proposed budget for the 2009-2010 school year. The Board was required to reduce staffing as a result of the budget defeat. The Board also has a mandate from the State to reduce its class size. As a result, the Board decided to deny enrollment to non-eligible students and all other non-resident, non-tuition paying children. This included prohibiting employees from enrolling their children without the payment of tuition and/or costs.

On July 2, 2009, the Association filed a grievance alleging that the Board violated Board Policy 5111 and provisions of the collective negotiations agreement including, but not limited to, Article I. Board Policy 5111 is entitled Eligibility of Resident/Nonresident Pupils. It provides, in relevant part:

> Children of non-resident employees of the Board may be enrolled in the schools of this District without payment of tuition, provided that they enroll prior to October 15 of the school year. Enrollment will be permitted provided that:

> 1. No increase in the size of facility or staff will be necessary to accommodate the child(ren); and
>
> 2. No class to which such pupils will be assigned will contain more than the desired number of pupils (as determined by the Principal and policy); and
>
> 3. Parent(s)/legal guardian(s) accept full responsibility for transportation.

On July 14, 2009, Poteat denied the grievance. On July 27, the Association filed a Level IV grievance with the Board. On August 19, the Board held a grievance hearing and on October 14, the Board denied the grievance. On October 16, the Association filed for binding arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

> The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.
>
> [Id. at 154]

Thus, we do not consider the merits of this grievance or any contractual defenses the Board may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.
>
> [Id. at 404-405]

Where a statute or regulation is alleged to preempt a negotiable term and condition of employment, it must do so expressly, specifically and comprehensively. See Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982).

The Board argues that the parties' agreement does not provide for binding arbitration of a policy decision; Board Policy 5111 has not been violated; the enrollment of employees' children in district schools is not mandatorily negotiable; the Board has a managerial prerogative to limit non-resident student enrollment to eligible non-resident students; and N.J.S.A.

18A:38-1 defines the Board's legal obligation to provide a free education to students who meet certain eligibility criteria.

The Association responds that the admission of the children of non-resident employees to district schools involves the Board's discretionary authority, is not preempted by New Jersey education law, and does not interfere significantly with the exercise of an inherent managerial prerogative.

The Board replies that due to its budget constraints, it was forced to reduce its pre-kindergarten program by 50%, instituted a reduction-in-force in May 2009; reduced kindergarten class sizes to a limit of 21 - the maximum allowed without an aide; and eliminated teacher aides and basic skills teachers. It reiterates that allowing tuition waivers for non-resident employees' children would significantly interfere with its managerial prerogative to limit enrollment.

A school board's authority to grant or deny tuition waivers for the children of employees is not preempted by statute or regulation. The discretion granted to school boards under N.J.S.A. 18A:38-1 to grant tuition waivers can be exercised through the collective negotiations process. See Quinton Tp. Bd. of Ed., P.E.R.C. No. 2010-50, 36 NJPER 8 (¶3 2010); Pennsville Bd. of Ed., P.E.R.C. No. 81-125, 7 NJPER 247 (¶12111 1981); Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER

78 (¶18036 1986); Moorestown Bd. of Ed., P.E.R.C. No. 94-21, 19 NJPER 455 (¶24215 1993).

The remaining question is whether, under the particular facts of this case, the Board has a managerial prerogative to limit the tuition-free enrollment of employees' children. The Board asserts that due to budget constraints, it was forced to reduce it pre-kindergarten program; instituted a reduction in force; reduced kindergarten class sizes; and eliminated teacher aides and basic skills teachers. The Board further asserts that the decision to limit enrollment was a budgetary necessity.

We appreciate all of those concerns. However, Board Policy 5111 specifically provides that there shall be no increase in the size of faculty or staff and no class to which employees' children shall be assigned will contain more than the desired number of pupils as determined by the principal and policy. Thus, the policy itself protects the Board's interests in those areas and continuation of the policy would therefore not significantly interfere with the determination of those educational policies.[1/]

1/ Tenafly Bd. of Ed., P.E.R.C. No. 91-61, 17 NJPER 64 (¶22029 1990), a case cited by the Board is distinguishable. There, the Commissioner of Education had restrained the district from admitting non-resident students because of issues of racial balance. No similar restraint is at issue in this case.

We do not comment on whether the parties' agreement provides for the arbitration of policy decisions. That is a question outside our narrow scope of negotiations jurisdiction that is reserved for the arbitrator. Ridgefield Park.

ORDER

The request of the Winslow Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: June 24, 2010

Trenton, New Jersey